Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of State and Local	)	WT Docket No. 19-250
Governments Obligation to Approve Certain	)	RM-11849
Wireless Facility Modification Requests Under	)	
Section 6409(a) of the Spectrum Act of 2012	)	
	)	
Accelerating Wireline Broadband Deployment	)	WC Docket No. 17-84
by Removing Barriers to Infrastructure	)	
Investment	)	

COMMENTS OF T-MOBILE USA, INC.

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COMMENTS OF T-MOBILE USA, INC.

T-Mobile USA, Inc. ("T-Mobile")[1] respectfully submits these comments in response to the *Public Notice* seeking comment on petitions for declaratory ruling filed by CTIA and the Wireless Infrastructure Association ("WIA") requesting that the Federal Communications Commission ("FCC" or "Commission") clarify its rules implementing Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 ("Spectrum Act") and Section 224 of the Communications Act (the "Act").[2] The Commission should move quickly to issue the requested

[1] T-Mobile USA, Inc. is a wholly-owned subsidiary of T-Mobile US, Inc., a publicly traded company.

[2] *See Wireless Telecommunications Bureau and Wireline Competition Bureau Seek Comment on WIA Petition for Rulemaking, WIA Petition for Declaratory Ruling, and CTIA Petition for Declaratory Ruling*, Public Notice, DA 19-913 (WTB/WCB rel. Sept. 13, 2019) ("*Public Notice*"); *Order*, DA 19-978 (WTB/WCB rel. Sept. 30, 2019) (extending comment and reply deadlines); *see also* WIA, Petition for Declaratory Ruling, WT Docket No. 19-250 (filed Aug. 27, 2019) ("WIA Petition for Declaratory Ruling"); CTIA, Petition for Declaratory Ruling, WT Docket No. 19-250, WC Docket No. 17-84 (filed Sept. 6, 2019) ("CTIA Petition for Declaratory Ruling"). The *Public Notice* also seeks comment on a petition for rulemaking filed by WIA requesting additional rules to implement Section 6409(a). *See* WIA, Petition for Rulemaking, RM-11849 (filed Aug. 27, 2019) ("WIA Petition for Rulemaking"). T-Mobile supports the

Declaratory Ruling as part of its continuing efforts to remove barriers to wireless infrastructure siting in order to speed the deployment of advanced wireless services, including 5G to all Americans.

INTRODUCTION AND SUMMARY

T-Mobile commends the FCC for its strong leadership in reducing barriers to wireless infrastructure siting. In the past two years, the Commission has facilitated the deployment of replacement poles critical to support next generation wireless services; clarified and streamlined key elements of the Tribal review process applicable to all cell sites, large and small; established shot clocks to speed the review of small wireless facilities; and interpreted Sections 253 and 332 of the Act to further accelerate the deployment of 5G-enabling wireless infrastructure.[3] As Commissioner Carr noted recently, "[t]his FCC has been focused on cutting red tape so that all Americans, regardless of where they live, can have access to fast, affordable connections, including through our world-leading 5G. Combined, the FCC's actions have enabled the U.S. to leapfrog our global competitors and secure the largest 5G build in the world."[4]

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commencement of a rulemaking proceeding to develop a record concerning the issues raised in the WIA Petition for Rulemaking.

[3] *See, e.g.*, *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Report and Order, 32 FCC Rcd 9760 (2017); *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Second Report and Order, 33 FCC Rcd 3102 (2018), *affirmed in part, vacated and remanded in part sub nom. United Keetoowah Band of Cherokee Indians in Oklahoma v. FCC*, 933 F.3d 728 (D.C. Cir. 2019); *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling and Third Report and Order, 33 FCC Rcd 9088 (2018) ("*Small Cell Declaratory Ruling*"), *recon. pending, appeals pending*.

[4] News Release, FCC Commissioner Brendan Carr, *D.C. Circuit Affirms Significant 5G Infrastructure Reforms* (Aug. 9, 2019), https://docs.fcc.gov/public/attachments/DOC-358999A1.pdf.

T-Mobile strongly supports the Commission's efforts to date, and it applauds the state and local governments that are partnering with industry to densify networks and help the Nation win the race to 5G. Consistent with these already significant infrastructure reforms, T-Mobile supports the CTIA and WIA petitions to clarify and further implement Section 6409(a) of the Spectrum Act[5] and the FCC's rules interpreting that section.[6] These requests recognize that in addition to the recent focus on small cell builds, traditional macro sites continue to play a critical role in providing service now and into the future. Effective and timely deployment of upgrades to existing macro sites will be a key part of the race to 5G, especially for mid- and low-band deployments. As Commissioner O'Rielly recently stated:

> While some treat macro towers as last year's news, this is short-sighted. Macro towers will continue to be the primary means for providing service to many Americans, especially with the emphasis on mid band spectrum.[7]

To facilitate the deployment of new technology and equipment, it is important for the FCC to reduce barriers to both the expansion and modification of existing macro sites and to new small cell builds.

Section 6409(a) directs states and localities to approve any eligible facilities request ("EFR") for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of the tower or base station.[8] While the FCC took

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[5] Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96 § 6409(a), 126 Stat. 156, 232-33 (2012) ("Spectrum Act"), *codified as* 47 U.S.C. § 1455(a).

[6] 47 C.F.R. § 1.6100.

[7] *See* Remarks of FCC Commissioner Michael O'Rielly Before the Mobile World Congress Americas 2019 Everything Policy Track, at 3 (Oct. 23, 2019), https://docs.fcc.gov/public/attachments/DOC-360382A1.pdf.

[8] Spectrum Act § 6409(a); 47 U.S.C. § 1455(a).

important steps to implement Section 6409(a),[9] the petitions demonstrate that some jurisdictions continue to act in ways that undermine the protections afforded by the statute and the Commission's rules.[10] The Commission can help address these deployment barriers by issuing a Declaratory Ruling clarifying the following aspects of Section 6409(a) and the FCC's implementing rules:

- ***Concealment Elements***. The FCC should clarify that: (i) the term "concealment element" in its rules means only a stealth facility or those aspects of a design intended to disguise the facility's appearance; (ii) equipment size is not a concealment element; (iii) minor changes to concealment elements should not automatically disqualify a modification from EFR status; and (iv) blanket concealment specifications cannot be used to prevent future applications from qualifying as EFRs.

- ***When an Application Is Deemed Granted***. The FCC should clarify that: (i) "deemed granted" means an applicant is legally authorized to construct; (ii) failure to timely issue all needed approvals triggers the deemed granted remedy; and (iii) a conditional approval with requirements not reasonably related to compliance with non-discretionary health and safety codes is a denial for purposes of the applicant's enforcement of the deemed granted remedy. The FCC also should make clear its expectation that applicants qualifying for a deemed granted remedy are entitled to injunctive relief.

- ***Application of the 60-Day Shot Clock***. The FCC should clarify that: (i) the 60-day shot clock begins to run once approval is sought by an applicant in good faith; (ii) hearings are unnecessary for EFR applications but, if they are held, they must occur within the shot clock period; and (iii) any mandatory pre-application procedures and requirements do not toll the 60-day shot clock.

- ***Other Issues***. The FCC should clarify that: (i) localities may not require applicants to provide documentation beyond what is reasonably related to determining whether a proposed modification qualifies as an EFR; (ii) the size or number of antennas do not constitute "conditions associated with the siting approval" under Section

[9] *See Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, Report and Order, 29 FCC Rcd 12865 (2014) ("*Wireless Infrastructure Order*"), *aff'd, Montgomery County v. FCC*, 811 F.3d 121 (4th Cir. 2015) ("*Montgomery County*").

[10] *See, e.g.*, Letter from Alexi Maltas, Competitive Carriers Association, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 1-3 (filed July 12, 2019); Letter from Mathew H. Mandel, Wireless Infrastructure Association, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 2-3 (filed May 20, 2019); Letter from Kenneth J. Simon, Crown Castle International Corp., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 10-17 (filed Aug. 10, 2018) ("Crown Castle *Ex Parte*").

1.6100(b)(7)(vi); and (iii) the term "equipment cabinet" in Section 1.6100(b)(7)(iii) includes only cabinets placed on the ground or elsewhere on the premises (including rooftops), and does not include equipment installed on the structure itself.

T-Mobile also supports CTIA's request to clarify the Commission's pole attachment rules to remove uncertainty about access to utility poles under Section 224.[11] Section 224 gives the Commission broad authority to regulate attachments to utility-owned and controlled poles, ducts, conduits, and rights-of-way.[12] The Commission has recognized that "[w]ireless carriers are entitled to the benefits and protections of Section 224,"[13] and has adopted rules implementing that section to ensure that utilities' rates, terms, and conditions for attachments are just, reasonable, and non-discriminatory.[14] T-Mobile agrees with CTIA that the time is right for the Commission to "leverage its authority to clarify and enforce those rules to prevent abuse by utilities and to remove barriers to deployment for wireless providers."[15] Accordingly, the Declaratory Ruling also should take the following steps to clarify the Commission's Section 224 pole attachment rules:

- ***Application to Light Poles***. The FCC should clarify that the term "pole" includes light poles and that, consistent with the requirements of Section 224 and the Commission's pole attachment rules, utilities must afford nondiscriminatory access to light poles at reasonable rates, terms, and conditions.

- ***No Blanket Prohibitions on Access to Certain Parts of the Pole***. The FCC should reaffirm that utilities may not impose blanket prohibitions on access to pole tops or any other portions of the poles they own, in the absence of demonstrated and pole-specific safety and reliability concerns. The FCC also should confirm that it will act promptly on

[11] *See* 47 U.S.C. § 224; 47 C.F.R. §§ 1.1401 *et seq*.

[12] *See id.* § 224(b).

[13] *See, e.g., Implementation of Section 703(e) of the Telecommunications Act of 1996*, Report and Order, 13 FCC Rcd 6777, 6798 ¶ 390 (1998) ("*1998 Pole Attachment Order*").

[14] *See* 47 C.F.R. §§ 1.1401 *et seq*.

[15] CTIA Petition for Declaratory Ruling at 20.

any complaints alleging a blanket prohibition contrary to Section 224 and the pole attachment rules.

- ***No Terms and Conditions Inconsistent with FCC Rules***. Finally, the FCC should declare that utilities cannot ask providers to accept pole attachment terms and conditions that are inconsistent with the Commission's pole attachment rules.

The Commission has ample authority to grant the requested relief. Under Section 5(d) of the Administrative Procedure Act ("APA") and Section 1.2 of the FCC's rules, the Commission has authority to issue a declaratory ruling to terminate a controversy or remove uncertainty.[16] The Commission should use that authority here to grant the CTIA and WIA petitions and adopt the requested Declaratory Ruling clarifying and interpreting Section 6409(a) of the Spectrum Act and Section 224 of the Act.

DISCUSSION

The Commission has taken significant steps to streamline siting rules to promote next generation networks, including 5G. Despite the undeniable public interest benefits associated with 5G, the CTIA and WIA petitions provide evidence of efforts by some localities to continue to erect barriers to the deployment of those networks. By issuing a Declaratory Ruling to address those barriers by further clarifying and interpreting Sections 6409(a) and 224 and the FCC's implementing regulations, the Commission will help to expand wireless connectivity, create jobs and economic growth, ensure the Country's success in the race to 5G, and bolster public safety operations.

[16] *See* 5 U.S.C. § 554(e); 47 C.F.R. § 1.2.

I. THE FCC SHOULD CLARIFY AND INTERPRET SECTION 6409(a) OF THE SPECTRUM ACT AND THE FCC'S IMPLEMENTING RULES.

Section 6409(a) provides that "a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station."[17] By requiring timely approval of eligible facilities requests, the Commission has recognized that Congress "intended to advance wireless broadband service for both public safety and commercial users."[18] Yet while this statute and the Commission's implementing rules have been upheld by the Fourth Circuit,[19] there are some jurisdictions, as detailed in the petitions, that have found ways to thwart the law. Their actions are having an adverse impact, significantly delaying or blocking altogether deployments that are needed to upgrade networks and provide improved connectivity for consumers, businesses, and first responders. The Commission should act now to remove these deployment barriers.

A. Concealment Elements and Concealment Element Changes

The Commission should make certain clarifications regarding the term "concealment element" and concealment element changes, as they relate to determining whether an application qualifies as an EFR and is entitled to Section 6409(a)'s streamlined processing. Under the Commission's Section 6409(a) rules, a modification is a substantial change, and therefore does not qualify for Section 6409(a) relief, if it "would defeat the concealment elements of the eligible support structure."[20] CTIA and WIA explain in their petitions how some municipalities are

[17] Spectrum Act, § 6409(a).

[18] *Wireless Infrastructure Order*, 29 FCC Rcd at 12872 ¶ 15.

[19] *Montgomery County*, 811 F.3d 121.

[20] 47 C.F.R. § 1.6100(b)(7)(v).

proffering "creative or inappropriate" regulatory interpretations of what a concealment element is and what constitutes a defeat of a concealment element in order to delay deployment and extend the review processes for modifications to existing facilities. T-Mobile has encountered similar issues. Allowing municipalities to broadly interpret concealment elements and claim that proposed modifications would defeat them is contrary to the purpose of Section 6409(a). The Commission should take the following actions to address these abuses.[21]

The term "concealment element" should be defined. The Commission should clarify that the term "concealment element" in Section 1.6100(b)(7)(v) of its rules means only a stealth facility or those aspects of a design intended to disguise the facility's appearance.[22] Clarification is needed because some municipalities have asserted that *any* modification to an antenna defeats concealment, even if the appearance of the tower or structure has not changed.[23] As CTIA and WIA explain, only those elements that were specifically identified as concealment elements when the structure was built should be counted as concealment elements that may not be defeated by a subsequent modification. Put differently, only those permit requirements designed specifically for the purpose of concealment – *i.e.*, to hide the equipment or blend it with its surroundings – should be considered concealment elements when determining whether a proposed modification qualifies as an EFR.[24]

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[21] Letter from Cathleen A. Massey, Vice President, Regulatory Affairs, T-Mobile, to Marlene H. Dortch, Secretary, FCC, WT Docket Nos. 17-79, 16-421 (Aug. 30, 2019) ("T-Mobile Letter").

[22] CTIA Petition for Declaratory Ruling at 12; WIA Petition for Declaratory Ruling at 10-11.

[23] T-Mobile Letter at 3.

[24] CTIA Petition for Declaratory Ruling at 12; WIA Petition for Declaratory Ruling at 12; T-Mobile Letter at 3.

Equipment size is not a concealment element. The Commission should clarify that the size of a facility, transmitter, or related equipment specified in a permit is not itself a concealment element.[25] Some localities have claimed that every aspect of a project constitutes an element of concealment, so that any increase in size defeats concealment. But as the record shows, claiming that all items listed in a permit are concealment elements "is nothing more than an attempt to evade the specific, objective size criteria that the Commission adopted in the [*Wireless Infrastructure Order*]."[26] As T-Mobile has explained, "[m]unicipalities should not be permitted to impose size-based concealment elements to evade the specific, objective size criteria the FCC adopted in 2014 to determine what qualifies as an EFR."[27]

Minor changes to concealment elements should not automatically disqualify a modification from EFR status. The record shows that some localities claim that small increases in size of concealment elements, such as increasing the height or length of screen walls or the width of a cannister, automatically disqualify the modification as an EFR because the existing concealment would be defeated – even if those changes are within the size allowances under 1.6100(b)(7).[28] Clarification is therefore needed to make clear that minor changes to an element designed for concealment do not defeat existing concealment – and thus do not disqualify an otherwise qualified EFR from Section 6409(a) streamlined processing – as long as the "concealment approach and perception of the site are maintained."[29] Put differently, minor

[25] WIA Petition for Declaratory Ruling at 13.

[26] Crown Castle *Ex Parte* at 13.

[27] T-Mobile Letter at 4.

[28] *Id*.

[29] *See* CTIA Petition for Declaratory Ruling at 12 n.27.

expansions to a stealth facility in connection with a modification should qualify for Section 6409(a) relief as long as the modification maintains the facility's stealth appearance and satisfies the size allowances of 1.6100(b)(7).[30]

Blanket concealment specifications cannot be used to deny 6409(a) relief. The Commission should clarify that a community may not avoid the applicability of Section 6409(a) to future EFR requests by instituting a blanket requirement that all wireless facilities within its jurisdiction must be replaced with camouflaged structures.[31] Clarification is needed because some municipalities have attempted to circumvent Section 6409(a) by adopting blanket requirements that all new permits for collocations and/or equipment replacements on pre-existing structures – including EFR permits – must be camouflaged or meet certain concealment measures.[32] Non-compliance with these blanket requirements is then used to disqualify an application from EFR treatment. Relatedly, some localities issue requirements that applicants must install large concealment elements, and then subsequently use the size of those concealment elements to determine that a proposed modification does not qualify as an EFR.[33] The FCC should clarify that such new ordinances conflict with the plain language of Section 6409 and Congressional intent and cannot be used to deny EFR treatment.

[30] *See* T-Mobile Letter at 3-4.

[31] *See* CTIA Petition for Declaratory Ruling at 12-13; Crown Castle *Ex Parte* at 11.

[32] T-Mobile Letter at 4.

[33] *See* CTIA Petition for Declaratory Ruling at 12-13.

B. When an Application Is Deemed Granted

To implement the mandate in Section 6409(a) that a jurisdiction "may not deny, and shall approve" an EFR, the Commission adopted a 60-day deadline to act on an EFR application and stated that an EFR request "shall be deemed granted" if action does not occur by the deadline.[34] Pursuant to Section 1.6100(c)(4) of the FCC's rules, the deemed grant shall "become effective" once the applicant provides written notice to the reviewing authority that the review period has expired and the application has been deemed granted as a result of the failure to timely act.[35] According to the Fourth Circuit, "the point of the 'deemed granted' provision is to ensure that collocation applications are not mired in the type of protracted approval processes that the Spectrum Act was designed to avoid."[36] Nevertheless, the record shows that some localities misunderstand the deemed granted provision and refuse to grant EFRs or issue building permits and other authorizations before an applicant may modify the structure.[37] The FCC should act to address these concerns.

Deemed granted means an applicant is legally authorized to construct. Clarification of Section 1.6100(c)(4) is needed because some localities assert that, notwithstanding the deemed

[34] *See* 47 C.F.R. § 1.6100(c)(4) ("In the event the reviewing State or local government fails to approve or deny a request seeking approval under this section within the timeframe for review (accounting for any tolling), the request shall be deemed granted. The deemed granted remedy does not become effective until the applicant notifies the applicable reviewing authority in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.").

[35] *Id*.

[36] *Montgomery County*, 811 F.3d at 128.

[37] *See* CTIA Petition for Declaratory Ruling at 17-18; *see also* WIA Petition for Declaratory Ruling at 5

grant, construction may not begin until they issue permits or other authorizations.[38] Indeed, "[m]any jurisdictions require providers to obtain a building permit or a highway permit for right of way work before work may commence."[39] T-Mobile has experienced firsthand a municipality failing to issue a needed building permit in a case where the 60-day shot clock expired on an EFR submitted by a vendor for T-Mobile.[40] This often means applicants are forced to litigate to enforce their deemed granted rights, which extends the time period before they can construct. The Commission should therefore clarify that if a project has been deemed granted, it may proceed without additional permits.[41]

T-Mobile agrees with CTIA that the Commission should clarify that the phrases "deemed granted" and "becomes effective" mean that if a jurisdiction fails to timely approve an EFR, "the applicant may lawfully modify [the structure] upon notice to the authority that the application is deemed granted."[42] T-Mobile also agrees with WIA that if a locality does not challenge a deemed granted notice within 30 days,[43] the Commission should clarify that a provider "is legally authorized to [construct] even if the locality refuses to issue building and other required

[38] *See* CTIA Petition for Declaratory Ruling at 18.

[39] *Id*.

[40] *See* Reply Comments of T-Mobile, WT Docket No. 17-79, WC Docket No. 17-84, at 8 (filed July 17, 2017).

[41] T-Mobile Letter at 4.

[42] CTIA Petition for Declaratory Ruling at 19.

[43] In its 2014 order implementing Section 6409(a), the Commission noted that a jurisdiction may "may challenge an applicant's written assertion of a deemed grant in any court of competent jurisdiction." *Wireless Infrastructure Order*, 29 FCC Rcd at 12962 ¶ 231. It further found no reason why such a claim "should not be brought within 30 days of … the date of the notification by the applicant to the State or local authority of a deemed grant." *Id*. at 12963-64 ¶ 236.

permits."[44] These clarifications are consistent with the Fourth Circuit decision upholding the deemed granted remedy, which explained that the remedy "obviates the need for the states to affirmatively approve applications."[45] As CTIA correctly notes, "there is no basis for localities to refuse additional permits once an application is deemed granted, because this federal remedy authorizes the applicant to modify the facility without local authorization."[46]

Failure to timely issue all needed approvals triggers the deemed granted remedy. Clarification of Section 1.6100(c)(4) is also needed because the record shows that some jurisdictions require multiple approvals for an EFR project and process those approvals sequentially – meaning they first issue a conditional use permit or other similar type of permit, but then also require the applicant to obtain additional separate approvals, like building, structural, electrical, and/or safety permits.[47] As CTIA explains, "[t]hese jurisdictions assert that the shot clock only applies to the approval of the EFR application itself and not to the issuance of other required permits, and then refuse to issue those permits to the applicant."[48] This result is not only contrary to the "shall approve" language in Section 6409(a), it also undermines the deemed granted remedy itself. T-Mobile therefore agrees the Commission should clarify that Section 1.6100(c)(4) applies to *all* approvals related to the modification, and that if the authority has failed to timely issue any such approvals, they are all deemed granted.[49] This action is

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[44] WIA Petition for Declaratory Ruling at 7.

[45] *Montgomery County*, 811 F.3d at 128.

[46] CTIA Petition for Declaratory Ruling at 20.

[47] *See id.* at 18; WIA Petition for Declaratory Ruling at 5-6.

[48] CTIA Petition for Declaratory Ruling at 18.

[49] *See id.* at 19; WIA Petition for Declaratory Ruling at 5-6; *see also* T-Mobile Letter at 4 (recommending that the FCC take steps to facilitate the enforcement of applications that are deemed granted); Reply Comments of T-Mobile, WT Docket Nos. 13-238, 13-32, WC Docket

consistent with the Commission's analogous ruling that the Section 332 shot clocks apply to "all authorizations" necessary for the deployment of facilities covered by Section 332 and that "[b]uilding and safety officials will be subject to the same applicable shot clock as all other siting authorities involved in processing the siting application."[50]

A conditional approval not reasonably related to health and safety is a denial, and the applicant can treat it as a denial for purposes of enforcing the deemed granted remedy. The record shows that clarification also is needed to address situations where localities issue approvals for an EFR project that contain conditions that are not derived from the original siting approval for the site in question or are in direct conflict with the original approval or the submitted application. Although a locality can require compliance with "conditions associated with the siting approval,"[51] it cannot add new, non-health or safety-related conditions when approving future EFR requests that are unrelated to the original siting approval – and then use that to deny 6409(a) treatment. As CTIA explains, such an approach "violat[es] Congress' mandate that [jurisdictions] 'shall approve' the application – not condition it."[52]

The FCC should therefore clarify that an approval with conditions different from those in the original permit approval for the site is the same as a *denial*, and in the event of such a "conditional" approval, the applicant can treat it as a denial for purposes of enforcing the deemed

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No. 11-59, RM-11688, at 14 (filed Mar. 5, 2014) ("T-Mobile 2014 Reply Comments") (arguing that all permits – *i.e.*, legitimate building, fire, electrical, and structural permits – should be included under the 60-day shot clock).

[50] *Small Cell Declaratory Ruling*, 30 FCC Rcd at 9155-56 ¶ 132, 9159 ¶ 137.

[51] *See* 47 C.F.R. § 1.6100(b)(7)(vi).

[52] CTIA Petition for Declaratory Ruling at 19; *see* WIA Petition for Declaratory Ruling at 20-21.

granted remedy.[53] According to WIA, "conditional approvals violate Section 6409(a)," and localities may not impose conditions unless they relate to "compliance with non-discretionary codes reasonably related to health and safety, including building and structural codes."[54] Quite simply, the Commission must confirm that any conditions on an approval of an EFR not based on non-discretionary health and safety codes or directly related to conditions from the original siting approval are void.

Failure to timely act triggers an expectation of injunctive relief. The FCC has recognized that even with a deemed granted remedy, there will be some instances in which an applicant may still want to obtain a permit – leaving applicants no choice but to seek judicial relief.[55] To that end, the Commission should make clear its expectation that applicants qualifying for a deemed granted remedy because of a jurisdiction's failure to timely act are entitled to injunctive relief to compel issuance of the permit or otherwise provide judicial imprimatur for the deemed grant. As the FCC recently reiterated in the context of its Section 332 shot clocks, "in the case of a failure to act within the reasonable time frames set forth in our rules, and absent some compelling need for additional time to review the application, *we believe that it would also be appropriate for the courts to treat such circumstances as significant factors*

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[53] *See* T-Mobile Letter at 4-5; WIA Petition for Declaratory Ruling at 21; *see also* T-Mobile 2014 Reply Comments at 16 (stating that conditional approvals are in fact denials that violate Section 6409(a)).

[54] WIA Petition for Declaratory Ruling at 20-21, 25 (internal quotations omitted).

[55] *See Wireless Infrastructure Order*, 29 FCC Rcd at 12963 n.636 (noting that "a party pursuing a claim under Section 6409(a) may seek injunctive relief, which may be appropriate in many cases in light of Congress's goal of advancing wireless broadband service"); *id*. at 12963 ¶ 236 (stating that "an applicant whose [EFR] application has been deemed granted might seek some form of judicial imprimatur for the grant by filing a request for declaratory judgment or other relief that a court may find appropriate").

weighing in favor of [injunctive] relief."[56] The FCC should likewise state its expectation that, as is the case with a failure to timely act under Section 332, "the traditional requirements for awarding preliminary or permanent injunctive relief would likely be satisfied in most cases and in most jurisdictions where a violation" of the Section 6409(a) timeframe for review is found.[57]

C. Application of the 60-Day Shot Clock

Section 1.6100(c) of the Commission's rules requires jurisdictions to act on EFR applications within 60 days of "when the application is filed," unless tolled by mutual agreement or the jurisdiction timely notifies the applicant in writing that the application is incomplete. Further clarification is needed because questions have arisen as to when an application is "filed" and when the 60 days is "tolled" for purposes of applying the EFR application review provisions in Section 1.6100(c).

The shot clock begins to run once there has been a good faith attempt to file an EFR application. The Commission should clarify that the Section 6409(a) 60-day shot clock begins to run once an applicant in good faith attempts to seek the necessary local government approvals.[58] A good faith attempt includes submitting an EFR under any reasonable process and starts upon initial written submission where an authority requires any type of pre-application

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[56] *Small Cell Declaratory Ruling*, 33 FCC Rcd at 9150 ¶ 122 (emphasis added) (internal quotations omitted).

[57] *Id*. at 9150-51 ¶ 123. Specifically, (i) success on the merits would be demonstrated when an applicant prevails in its failure-to-act case, and likelihood of success would be demonstrated because missing the 60-day shot clock violates the statute's "shall approve" mandate; (ii) continuing irreparable injury would exist because remand to the siting authority would serve no useful purpose and would further delay service to the public; (iii) there would be no other adequate remedy at law because applicants have a federal statutory right to approval of an EFR (something monetary damages alone cannot cure); and (iv) the public interest would be served by compelling issuance of a permit to accelerate service to the public. *See id*.

[58] WIA Petition for Declaratory Ruling at 8-9.

submission or meetings.[59] Clarification is warranted because some local governments continue to bounce EFRs between departments or processes and then either disregard the shot clock entirely or argue that it has not yet started.[60]

Mandatory pre-application requirements and processes, as well as any public hearings, do not toll the shot clock. The Commission should clarify that because approval of an EFR is non-discretionary, public hearings are "unnecessary or superfluous."[61] Nonetheless, if such hearings are held, they must occur within the shot clock period and be limited to the presentation of information reasonably related to an EFR determination.[62] The Commission also should clarify that any mandatory pre-application procedures and requirements do not toll the Section 6409(a) 60-day shot clock.[63] Both of these clarifications are necessary because localities continue to use lengthy hearings and pre-application processes to toll the existing shot clocks, undermining the very purpose of such shot clocks.[64] They are also consistent with the FCC's recent pronouncements concerning its Section 332 shot clocks.[65]

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[59] *Id.*

[60] *Id.*

[61] *Id*. at 9.

[62] *Id*.; *see also* Crown Castle *Ex Parte* at 15-16.

[63] WIA Petition for Declaratory Ruling at 9; *see also* Crown Castle *Ex Parte* at 15.

[64] WIA Petition for Declaratory Ruling at 9; *see also* T-Mobile 2014 Reply Comments at Att. A (Declaration of John L. Zembruski).

[65] *Small Cell Declaratory Ruling*, 33 FCC Rcd at 9162 ¶ 145 ("We also find that mandatory pre-application procedures and requirements do not toll the shot clocks."); *id*. at 9163 ¶ 145 ("[W]e conclude that if an applicant proffers an application, but a state or locality refuses to accept it until a pre-application review has been completed, the shot clock begins to run when the application is proffered.").

D. Other Issues

The petitions raise additional issues that the Commission also should clarify. T-Mobile encourages the FCC to pursue these issues in addition to those detailed above.

Documentation requests must be reasonably related to determining EFR status. WIA asks the Commission to clarify that localities may not require applicants to provide documentation beyond what is reasonably related to determining whether the proposed modification qualifies as an EFR under Section 6409(a).[66] T-Mobile has encountered similar burdensome requests for documentation unrelated to EFR status and urges the Commission to act to prohibit this behavior.[67]

Conditions on antenna size/number cannot be used to defeat Section 6409(a) treatment. The Commission should clarify language in Section 1.6100(b)(7)(vi) of its rules – which states that a modification constitutes a substantial change if it "does not comply with conditions associated with the siting approval" – in order to close loopholes being used by some localities to avoid application of Section 6409(a).[68] First, the Commission should clarify that local restrictions on the size or number of antennas that may be placed on a structure are not "conditions associated with the siting approval" of the specific support structure in question for purposes of Section 1.6100(b)(7)(vi), and that such restrictions cannot, on their own, cause a

[66] WIA Petition for Declaratory Ruling at 23-24.

[67] T-Mobile Letter at 5; *see also* T-Mobile 2014 Reply Comments at 13.

[68] WIA Petition for Declaratory Ruling at 14-16; *see* 47 C.F.R. § 1.6100(b)(7)(vi) (stating that a modification is a substantial change if it "does not comply with *conditions associated with the siting approval* of the construction or modification of the eligible support structure or base station equipment") (emphasis added).

collocation application to be disqualified for Section 6409(a) treatment.[69] In addition, the FCC should confirm that, consistent with Section 1.6100(b)(7)(vi), increasing the size of facilities within the height and width allowances of Sections 1.6100(b)(7)(i) and (b)(7)(ii) cannot be a substantial change.[70] Finally, the Commission should clarify that Section 1.6100(b)(7)(vi) applies only if the proposed modification itself would cause non-compliance with previously imposed conditions on a structure or site – and not, as some localities have claimed, where non-compliance with prior conditions has nothing to do with, and pre-dates, a proposed collocation.[71]

The term equipment cabinets includes only enclosures placed on the ground or elsewhere on the premises. The Commission should clarify that the numerical limits in Section

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[69] *See* WIA Petition for Declaratory Ruling at 16. As WIA explains: "These restrictions often are not based on any discernable safety concern and lack any sound engineering basis. Often, these restrictions are not technologically feasible for the applicant's equipment. In some cases, these restrictions are set at an artificially low level by localities and, when future collocation requests exceed the arbitrary thresholds, localities claim that the collocation requests violate the conditions associated with the initial siting approval and therefore do not qualify for treatment under Section 6409(a)." *Id*.

[70] T-Mobile Letter at 5; *see* 47 C.F.R. § 1.6100(b)(7)(vi) (stating that the limitation on non-compliance with siting approval conditions is inapplicable if the modification is non-compliant "only in a manner that would not exceed the thresholds identified in § 1.40001(b)(7)(i) through (iv)"). Relatedly, as discussed above, some localities treat equipment size as a "concealment element[]" under Section 1.6100(7)(b)(v), and deny 6409(a) treatment under that section. The Commission also should make clear that "[p]ermit requirements generally are not considered concealment elements, absent a prior fact-based analysis of a specific proposal resulting in a determination that certain requirements are necessary to conceal the proposed facility." *See* WIA Petition for Declaratory Ruling at 13.

[71] *See* WIA Petition for Declaratory Ruling at 14-15. WIA provides the following examples of situations where localities wrongly refuse to process EFR applications based on unrelated prior conditions: "[I]f extensive landscaping improvements were required as part of the initial site approval, a locality may refuse to process an EFR if various trees planted to comply with the landscape condition have died. The locality may refuse to process the application unless the applicant agrees to replace the trees (or in some cases replace the trees and comply with newer landscaping requirements). Or, for example, where a parcel of land has multiple uses, such as a commercial business as well as a cell tower, a jurisdiction may refuse to consider an EFR because of a violation or issue with a building or use that is entirely unrelated to the tower." *Id.*

1.6100(b)(7)(iii) of its rules regarding the number of equipment cabinets permitted for any eligible support structure before an application constitutes a substantial change[72] do not apply to equipment installed on the structure, including equipment in encasements. Rather, as CTIA notes, the term "equipment cabinets" used in the definition of substantial change should include only enclosed equipment installed "on the ground, underground, or elsewhere on the premises (such as on the rooftop)."[73] This clarification is consistent with the limits that apply for towers in the public rights-of-way and base stations,[74] and also with the fact that the rule contains separate sized-based limitations for equipment mounted on the support structure.[75]

II. THE FCC SHOULD CLARIFY AND INTERPRET SECTION 224 OF THE COMMUNICATIONS ACT AND THE FCC'S POLE ATTACHMENT RULES.

The Commission also should clarify Section 224 of the Act and its implementing rules to remove uncertainty about wireless access to utility poles under Section 224. Section 224 grants the FCC broad authority to regulate attachments to utility-owned and controlled poles, ducts,

[72] Section 1.6100(b)(7)(iii) states that for any eligible support structure, it would be a substantial change if the modification "involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets." 47 C.F.R. § 1.6100(b)(7)(iii).

[73] CTIA Petition for Declaratory Ruling at 13-14; WIA Petition for Declaratory Ruling at 13-14; T-Mobile Letter at 5; Letter from Joshua S. Turner, Counsel to Crown Castle International Corp., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 2-3 (June 17, 2019).

[74] *See* 47 C.F.R. § 1.6100(b)(7)(iii) (stating that for towers in the public rights-of-way and base stations, it would be a substantial change if the modification "involves installation of any new equipment cabinets *on the ground* if there are no pre-existing ground cabinets associated with the structure, or else involves installation *of ground cabinets* that are more than 10% larger in height or overall volume than *any other ground cabinets* associated with the structure") (emphasis added).

[75] *See* 47 C.F.R. § 1.6100(b)(7)(i)-(ii).

conduits, and rights-of-way.[76] Specifically, the Act authorizes the FCC to prescribe rules to: (i) ensure that the rates, terms, and conditions of pole attachments are just and reasonable;[77] (ii) require that utilities[78] provide nondiscriminatory access to their poles, ducts, conduits, and rights-of-way to telecommunications carriers and cable television systems (collectively, "attachers");[79] (iii) provide procedures for resolving pole attachment complaints;[80] (iv) govern pole attachment rates for attachers;[81] and (v) allocate make-ready costs among attachers and utilities.[82]

The FCC has adopted rules implementing these provisions in Section 224 and reconciling ambiguities contained in the statute,[83] and these interpretations have been upheld by the courts.[84]

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[76] *See* 47 U.S.C. § 224(b)(1); *see also Am. Elec. Power Serv. Corp. v. FCC*, 708 F.3d 183, 188 (D.C. Cir. 2013) (noting that "§ 224(b)(1) gives the Commission broad authority to ensure that pole attachment rates are 'just and reasonable'") ("*Am. Elec. Power Serv. Corp.*").

[77] 47 U.S.C. § 224(b)(1)-(2).

[78] The term "utility" is defined as a "local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications." 47 U.S.C. § 224(a)(1). The term does not include any railroad, any cooperatively-organized entity, or any entity owned by a federal or state government. *Id*.

[79] 47 U.S.C. § 224(f).

[80] *Id*. § 224(b)(1).

[81] *Id*. §§ 224(d)-(e).

[82] *Id*. §§ 224(b), (h)-(i). The Act exempts from FCC jurisdiction those pole attachments in states that have elected to regulate pole attachments themselves. *Id*. § 224(c). Approximately twenty states and the District of Columbia have elected to opt out of FCC regulation of pole attachments in their jurisdictions. *States That Have Certified That They Regulate Pole Attachments*, Public Notice, 25 FCC Rcd 5541, 5541-42 (WCB 2010).

[83] *See* 47 C.F.R. §§ 1.1401 *et seq*.

[84] *See, e.g.*, *1998 Pole Attachment Order*, 13 FCC Rcd 6777; Report and Order, 15 FCC Rcd 6453 (2000); Consolidated Partial Order on Reconsideration, 16 FCC Rcd 12103 (2001), *aff'd Southern Co. Servs. Inc. v. FCC*, 313 F.3d 574, 576 (D.C. Cir. 2002) ("*Southern Co.*"); *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240 (2011) ("*2011 Pole Attachments Order*"), *aff'd Am. Elec. Power Serv. Corp.*, 708 F.3d 183, 189-90 (D.C. Cir. 2013); *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, Order on

Although the Commission has long recognized that Section 224 affords attachment rights to wireless providers,[85] the CTIA Petition for Declaratory Ruling demonstrates that some utilities are misinterpreting the statute and the FCC's rules to deny or restrict wireless attachments on existing poles. As discussed below, T-Mobile agrees with CTIA that the Commission should "leverage its authority to clarify and enforce those rules to prevent abuse by utilities and to remove barriers to deployment for wireless providers."[86]

A. Application to Light Poles

The Commission should declare that the term "pole" as used in Section 224 includes light poles, which are ideal locations to support broadband and 5G-enhancing small cells.[87] While Section 224 obligates any utility to make its "poles" available for attachments at reasonable rates to wireless and other telecommunications carriers, the statue does not define what a pole is. CTIA explains that many utilities are charging a premium for access to utility-owned light poles at rates that are "orders of magnitude higher than the limits established under Section 224," or they are denying access altogether.[88] But this narrow reading is contrary to the broad language

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Reconsideration, 30 FCC Rcd 13731 (2015), *aff'd Ameren Corp. v. FCC*, 865 F.3d 1009 (8th Cir. 2017) ("*Ameren Corp.*").

[85] *See, e.g.*, *1998 Pole Attachment Order*, 13 FCC Rcd at 6798 ¶ 39 (holding that "[w]ireless carriers are entitled to the benefits and protections of Section 224").

[86] CTIA Petition for Declaratory Ruling at 20.

[87] *See id.* at 21. The Broadband Deployment Advisory Committee ("BDAC") has recognized that light poles should be made available for communications facilities to facilitate broadband deployment. *See* BDAC, State Model Code for Accelerating Broadband Infrastructure Deployment and Investment, § 2(51), https://www.fcc.gov/sites/default/files/bdac-12-06-2018-model-code-for-states-approved-rec.pdf; BDAC, Model Code for Municipalities, § 1.2(v), https://www.fcc.gov/sites/default/files/bdac-07-2627-2018-model-code-for-municipalities-approved-rec.pdf.

[88] CTIA Petition for Declaratory Ruling at 22.

of the Act, which mandates that a utility shall provide "nondiscriminatory access to *any* pole, duct, conduit, or right-of-way owned or controlled by it."[89] Undefined statutory terms are to be given their "ordinary meaning"[90] and, read naturally, "'any' means 'all.'"[91] As CTIA correctly notes, "a light pole is clearly a pole, particularly when Congress expressly chose to encompass 'any' pole within Section 224."[92] By declaring that the term "pole" in Section 224 includes light poles, the Commission will advance Section 224's pro-competition goals and the Commission's efforts to promote the deployment of wireless infrastructure to support broadband and 5G.

B. No Blanket Prohibitions on Access to Certain Parts of the Pole

The FCC should confirm that Section 224 does not allow utilities to impose blanket prohibitions against the installation of wireless equipment on all or parts of a pole, and that denials of access to all or part of a pole must be based upon clearly demonstrated safety and reliability concerns that are specific to the particular pole.[93] CTIA shows in its petition that some utilities continue to resist allowing access to pole tops for wireless attachments, while others deny access to so-called "unusable" space on lower portions of poles below where utility and

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[89] 47 U.S.C. § 224(f)(1) (emphasis added). While some utilities cite an Eleventh Circuit case for the proposition that Section 224 applies only to electric distribution poles, they misconstrue that case. *See Southern Co. v. FCC*, 293 F.3d 1338 (11th Cir. 2002) ("*Southern*"). Not only does *Southern* not address light poles, it held that Section 224's reference to "any" pole means that Congress intended to grant access rights to "all" of a utility's poles. *See id.* at 1349-50 (holding that Section 224(f)(1) "plainly mandates that utilities make *all* of their 'poles, ducts, conduits, or rights-of-way' available to third-party attachers" without limitation, barring safety concerns) (emphasis added).

[90] CTIA Petition for Declaratory Ruling at 23 (quoting *Petit v. U.S. Department of Education*, 675 F.3d 769, 781 (D.C. Cir. 2012)).

[91] *Southern*, 293 F.3d at 1350 (citing *Merritt v. Dillard Paper Co.*, 120 F.3d 1181, 1186 (11th Cir. 1997).

[92] *See* CTIA Petition for Declaratory Ruling at 23.

[93] *See id*. at 25.

cable lines are typically attached.[94] The Commission should strongly reiterate that such blanket denials violate the right of wireless attachers to access pole tops or any other part of the pole, in the absence of pole-specific showing of risks to safety or reliability. As the Commission has explicitly declared, "a wireless carrier's right to attach to pole tops is the same as it is to attach to any other part of a pole," and utilities may deny access only "where there is insufficient capacity, and for reasons of safety, reliability, and generally applicable engineering purposes."[95] The Commission should reinforce these findings here. And because some utilities continue to resist following these directives, T-Mobile agrees with CTIA that the Commission should "make clear that it will promptly rule on complaints regarding access refusals, overcharges, or other such obstructive practices" when such complaints are needed.[96]

C. No Terms and Conditions Inconsistent with FCC Rules

Finally, the Commission should affirm its prior holding that utilities may not impose pole attachment terms that conflict with the Commission's pole attachment rules. The record shows that some utilities "demand unlawful, unfavorable terms in return for agreeing to the regulated rate or other obligations that are already imposed by the rules," while others "condition [their] willingness to evaluate an application by seeking rates, terms and conditions that deviate from those the rules require."[97] Such actions are inconsistent with the Commission's prior finding that "a utility's demand for a clause waiving the [attacher's] right to federal, state or local regulatory

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[94] *See id.* at 26-27.

[95] *2011 Pole Attachments Order*, 26 FCC Rcd at 5276 ¶ 77.

[96] CTIA Petition for Declaratory Ruling at 27.

[97] *See id.* at 28 (citing Letter from Kenneth J. Simon, Crown Castle, to Marlene H. Dortch, FCC, WC Docket No. 17-894, WT Docket No. 17-79, at 4 (filed July 25, 2018)).

relief would be per se unreasonable and an act of bad faith in negotiation."[98] Yet today, rather than overtly demanding that attachers waive legal rights granted under Section 224 and the FCC's pole attachment rules, some utilities achieve the same result indirectly by conditioning their acceptance of terms sought by the attacher on the latter's acceptance of other terms that alter and undermine those rights.[99] While the Commission's recent order amending the pole attachment rules to implement a "one-touch-make-ready" policy allows parties to negotiate mutually bargained-for attachment solutions, the Commission should clarify that the *OTMR Order* only permits parties to customize agreements "within the bounds of the Commission's rules."[100] The *OTMR Order* should not be used to allow negotiation that results in an agreement that "conflicts with the procedures, timelines, and requirements" in those rules.[101]

III. THE FCC HAS AMPLE AUTHORITY TO TAKE THESE ACTIONS AND TO PROCEED VIA DECLARATORY RULING.

The Commission has ample authority to adopt these clarifications via declaratory ruling. The FCC has broad discretion as to how it conducts its proceedings,[102] and this includes whether

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[98] *1998 Pole Attachment Order*, 13 FCC Rcd at 6789-90 ¶ 21.

[99] *See* CTIA Petition for Declaratory Ruling at 29-30.

[100] *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Third Report and Order and Declaratory Ruling, 33 FCC Rcd 7705 (2018) ("*OTMR Order*"), *recon. pending, appeals pending*. In that decision, the Commission indicated at one point that "parties are welcome to reach bargained solutions that differ from our rules," *id*. at 7711 ¶ 13, while it elsewhere held that "[a]llowing private contracts to dictate our policy choice would subvert the supremacy of federal law over contracts," *id*. at 7731 ¶ 50 (internal quotations omitted). The latter is the appropriate legal and policy framework. *See* CTIA Petition for Declaratory Ruling at 30.

[101] CTIA Petition for Declaratory Ruling at 31. As CTIA explains, the pole owner and prospective attacher should be able to negotiate "regarding individual locations, types of poles, local rights-of-way policies, and variations in terrain." *See id*.

[102] *FCC v. Schreiber*, 381 U.S. 279, 289-90 (1965); 47 U.S.C. § 154(j).

to proceed by declaratory ruling.[103] Under the Administrative Procedure Act and the FCC's rules, the Commission has authority to issue a declaratory ruling to terminate a controversy or remove uncertainty.[104] And it is well settled that agencies are authorized to interpret ambiguous provisions in the statutes they administer,[105] and agencies may likewise clarify ambiguities in their own rules and provide additional guidance via declaratory ruling.[106] Indeed, the Commission has already acted in 2014 to interpret ambiguities in Section 6409(a) to remove deployment barriers, and the exercise of that authority has been recognized and upheld by the Fourth Circuit.[107] Likewise, the Commission's authority to interpret ambiguous provisions in

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[103] *See Viacom Int'l v. FCC*, 672 F.2d 1034, 1042 (2nd Cir. 1982) (recognizing that the FCC has discretion to proceed by declaratory ruling rather than rulemaking); *Chisholm v. FCC*, 538 F.2d 349, 364-65 (D.C. Cir. 1976) (confirming that the FCC may adopt a new statutory interpretation through declaratory ruling rather than rulemaking).

[104] *See* 5 U.S.C. § 554(e) ("The agency, with like effect as in the case of other orders, and in its sound discretion, may issue a declaratory order to terminate a controversy or remove uncertainty."); 47 C.F.R. § 1.2 ("The Commission may, in accordance with … the Administrative Procedure Act, on motion or on its own motion issue a declaratory ruling terminating a controversy or removing uncertainty.").

[105] *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 980 (2005) ("[A]mbiguities in statutes within an agency's jurisdiction to administer are delegations of authority to the agency to fill the statutory gap in reasonable fashion. Filling these gaps … involves difficult policy choices that agencies are better equipped to make than courts. If a statute is ambiguous, and if the implementing agency's construction is reasonable, *Chevron* requires a federal court to accept the agency's construction of the statute ….") (citing *Chevron U.S.A. Inc. v. NRDC*, 467 U.S. 837, 843-44, 865-66 (1984)); *see also Time Warner Entm't Co. L.P. v. FCC*, 56 F.3d 151, 174-76 (D.C. Cir. 1995) (agencies are empowered to interpret their organic statutes through rules and other mechanisms).

[106] *See Connect America Fund*, Declaratory Ruling, 30 FCC Rcd 1587, 1588 n.3 (2015) (issuing declaratory ruling to interpret the VoIP symmetry rule in Section 51.913(b) of the Commission's rules); *Reexamination of Roaming Obligations of CMRS Providers*, Declaratory Ruling, 29 FCC Rcd 15483, 15494 (WTB 2014) (issuing declaratory ruling to provide guidance on how to evaluate data roaming agreements under the Section 20.12(e) of the Commission's rules), *apps. rev. pending*.

[107] *See Montgomery County*, 811 F.3d at 124 ("We further conclude that the FCC has reasonably interpreted the ambiguous terms of Section 6409(a) of the Spectrum Act.").

Section 224 has been upheld on multiple occasions by both the D.C. and the Eighth Circuits.[108] The Commission should use that authority here to issue the requested Declaratory Ruling.

CONCLUSION

For the foregoing reasons, the Commission should grant the CTIA and WIA petitions and adopt the requested Declaratory Ruling clarifying and interpreting Section 6409(a) of the Spectrum Act, Section 224 of the Communications Act, and the FCC's rules implementing both statutes. By taking these steps, the Commission will continue to facilitate the provision of advanced wireless services, including 5G, to customers throughout the Nation.

Respectfully submitted,

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[108] *See Southern Co.*, 313 F.3d at 576 ("[W]e find that the FCC Orders are premised on reasonable interpretations of the Act …."); *Am. Elec. Power Serv. Corp.*, 708 F.3d at 189-90 (holding that the term "cost" as used in § 224(e) is ambiguous and that the FCC's interpretation of the statute was reasonable); *Ameren Corp.*, 865 F.3d at 1013 ("We conclude that the November 2015 Order constitutes a reasonable interpretation of the ambiguity in § 224(e).").